

# EXHIBIT "A"

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND  
COMPOUNDING PHARMACY,  
INC. PRODUCTS LIABILITY      MDL No. 2419  
LITIGATION  
  
Master Dkt:  
1:13-md-02419-RWZ

~~~~~  
THIS DOCUMENT RELATES  
TO:

All Actions

~~~~~

VIDEOTAPED DEPOSITION OF  
SCOTT BUTLER

9:03 a.m.  
February 5, 2015

Suite 1100  
315 Deaderick Street  
Nashville, Tennessee

Blanche J. Dugas, RPR, CCR No. B-2290

APPEARANCES OF COUNSEL

On Behalf of the Plaintiffs:

GEORGE NOLAN, Esquire  
WILLIAM LEADER, Esquire  
Leader, Bulso & Nolan, PLC  
Suite 1740  
414 Union Street  
Nashville, Tennessee 37219-1734  
(615) 780-4114  
(615) 780-4122 (facsimile)  
gnolan@leaderbulso.com  
bleader@leaderbulso.com

J. GERARD STRANCH, IV, Esquire  
Branstetter, Stranch & Jennnings, PLLC  
227 Second Avenue North  
Nashville, Tennessee 37201  
(615)254-8801  
gerards@branstetterlaw.com

MARK P. CHALOS, Esquire  
Lieff, Cabraser, Heimann & Bernstein, LLP  
Suite 1650, One Nashville Place  
150 Fourth Avenue  
Nashville, Tennessee 37219-2423  
(615) 313-9000  
(615) 313-9965 (facsimile)  
mchalos@lchb.com

DANIEL L. CLAYTON, Esquire  
Kinnard, Clayton & Beveridge  
127 Woodmont Boulevard  
Nashville, Tennessee 37205  
(615) 686-2501  
(615) 297-1505 (facsimile)  
dclayton@kcbattys.com

1                   ~~ APPEARANCES CONTINUED ~~

2       On Behalf of Saint Thomas Outpatient Neurosurgical  
3       Center, LLC; Howell Allen, a Professional Corporation;  
4       John W. Culclasure, M.D.; Debra V. Schamberg, RN:

5               CLARENCE J. "C.J." GIDEON, JR., Esquire

6               MATTHEW CLINE, Esquire

7               CHRISTOPHER TARDIO, Esquire

8               Gideon, Cooper & Essary, PLC

9               Suite 1100

10              315 Deaderick Street

11              Nashville, Tennessee 37238

12              (615) 254-0400

13              cj@gideoncooper.com

14              matt@gideoncooper.com

15              chris@gideoncooper.com

16       On Behalf of St. Thomas Health; St. Thomas Network;  
17       St. Thomas West Hospital f/k/a St. Thomas Hospital:

18              ERIC J. HOFFMAN, Esquire

19              ADAM T. SCHRAMEK, Esquire

20              Norton, Rose, Fulbright

21              Suite 1100

22              98 San Jacinto Boulevard

23              Austin, Texas 78701

24              (512) 536-5232

25              adam.schramek@nortonrosefulbright.com

              eric.hoffman@nortonrosefulbright.com

              AMY D. HAMPTON, Esquire

              Bradley, Arant, Boulton & Cummings, LLP

              Suite 700, Roundabout Plaza

              1600 Division Street

              Nashville, Tennessee 37203

              (615) 244-2582

              (615) 252-6379 (facsimile)

              ahampton@babco.com

              On Behalf of Premier Orthopaedic & Sports Medicine  
              Associates of Southern New Jersey, LLC d/b/a Premier  
              Orthopaedic & Sports Associates, LLC; Premier  
              Orthopaedic Associates Surgical Center, LLC:

              JAY J. BLUMBERG, Esquire

              Blumberg & Wolk, LLC

              158 Delaware Street

              Woodbury, New Jersey 08096

              (856) 848-7472

              (856) 848-8012 (facsimile)

              jjblumberg@blumberglawoffices.com

1                   ~~ APPEARANCES CONTINUED ~~

2    On Behalf of UniFirst Corporation:

3           JIM REHNQUIST, Esquire  
4           KATE E. MACLEMAN, Esquire  
5           Goodwin Procter, LLP  
6           53 State Street, Exchange Place  
7           Boston, Massachusetts 02109  
8           (617) 570-1000  
9           (617) 523-1231 (facsimile)  
10          jrehnquist@goodwinprocter.com  
11          kmacleman@goodwinprocter.com

12   On Behalf of Specialty Surgery Center - Crossville,  
13    PLLC; Kenneth R. Lister, M.D.; Kenneth R. Lister,  
14    M.D., PC:

15           MEGAN A. CARRICK, Esquire  
16           Brewer, Krause, Brooks, Chastain & Burrow, PLLC  
17           Suite 2600  
18           611 Commerce Street  
19           Nashville, Tennessee 37203  
20           (615)256-8787  
21           (615)256-8985 (facsimile)  
22           mcarrick@bkblaw.com

23    \* The Following Attorneys Appeared Via Video Stream \*

24           CLARE CARROLL, Esquire  
25           McCarthy, Bouley & Barry, PC  
26           47 Thorndike Street  
27           Cambridge, Massachusetts 02141  
28           (617) 225-2211  
29           (617) 225-7711 (facsimile)  
30           cfc@mbblaw.com

31           REBECCA BLAIR, Esquire  
32           The Blair Law Firm  
33           Suite 207  
34           5214 Maryland Way  
35           Brentwood, Tennessee 37027  
36           (615) 515-4492  
37           rblair@blair-law.com

~~ APPEARANCES CONTINUED ~~

DUSTIN CLINT DANIEL, Esquire  
Schulman, LeRoy & Bennett, PC  
7th Floor  
501 Union Street  
Nashville, Tennessee 37219-0676  
(615) 244-6670  
(615) 254-5407 (facsimile)  
ddaniel@slblawfirm.com

KATHERINE DENNIS, Esquire  
Capplis, Connors & Carroll, PC  
Suite 220  
18 Tremont Street  
Boston, Massachusetts 02108  
(617) 227-0722

MELISSA HOWARD, Esquire  
Leader, Bulso & Nolan, PLC  
Suite 1740  
414 Union Street  
Nashville, Tennessee 37219-1734  
(615) 780-4114  
(615) 780-4122 (facsimile)  
mhoward@leaderbulso.com

BRANDON KULWICKI, Esquire  
Stewart, Courington, Dugger & Dean  
Suite 200  
1701 N. Market Street  
Dallas, Texas 75202  
(214) 615-2025  
(214) 615-2001 (facsimile)  
brandon@scddlaw.com

J. KYLE ROBY, Esquire  
English, Lucas, Priest & Owsley, LLP  
1101 College Street  
Bowling Green, Kentucky 42102-0770  
(270) 782-6500  
(270) 782-7782 (facsimile)  
kroby@elpolaw.com

1                               ~~ APPEARANCES CONTINUED ~~

2           LOUIS W. VOELKER, Esquire  
3           Eichhorn & Eichhorn, LLP  
4           200 Russell Street  
5           Hammond, Indiana 46320  
6           (219) 931-0560  
7           lvoelker@eichhorn.com

8           MARK ZAMORA, Esquire  
9           The Orlando Firm, PC  
10          Suite 2600  
11          5 Concourse Parkway  
12          Atlanta, Georgia 30328  
13          (404) 373-1800  
14          mark@markzamora.com

15          JEREMY CAIN, Esquire  
16          Gideon, Cooper & Essary, PLC  
17          Suite 1100  
18          315 Deaderick Street  
19          Nashville, Tennessee 37238  
20          (615) 254-0400  
21          jeremy@gideoncooper.com

22  
23  
24  
25

1 Q. Well, what is your understanding of the  
2 purpose that St. Thomas and Howell Allen Clinic had  
3 operated St. Thomas Surgical since you were involved  
4 beginning in 2007?

5 A. Since I've been involved, it's been  
6 operating as a surgery center that does epidural  
7 steroid injections, blocks.

8 Q. Okay. And as I understand it, the  
9 ownership of that entity is shared equally between St.  
10 Thomas and Howell Allen Clinic; is that correct?

11 A. Yes.

12 Q. But the profits from that entity are  
13 distributed equally; is that correct?

14 A. Yes.

15 Q. And it is a for-profit entity?

16 A. Yes.

17 Q. And the profits are calculated after  
18 expenses are paid; is that correct?

19 A. Yes.

20 Q. So that expenses are likewise shared  
21 between the venturers; is that true?

22 A. Yes.

23 Q. And at the time of the meningitis outbreak,  
24 who were the St. Thomas Neurosurgical board members?

25 A. Myself, Greg Lanford, Dale Batchelor and



1           A.       I think depending on what -- what it is,  
2   yes.

3           Q.       And what was the purpose for having  
4   representatives of St. Thomas on the St. Thomas  
5   Neurosurgical board?

6           A.       Because they own 50 percent of the -- of  
7   the surgery center.

8           Q.       Okay. Would I be correct in understanding  
9   that both Howell Allen Clinic and St. Thomas -- and  
10   St. Thomas had an equal right to control St. Thomas  
11   Neurosurgical because their representation on the  
12   board was equal?

13                   MR. HOFFMAN: Objection to form.

14                   THE WITNESS: I'm not sure what  
15   you're asking.

16           Q.       (By Mr. Nolan) Sure. The board  
17   representation for Howell Allen and St. Thomas was  
18   equal, each side had two members on the board for a  
19   total of four; is that correct?

20           A.       Yes.

21           Q.       All right. So both members of the joint  
22   venture had equal control as far as the venture itself  
23   was concerned. You'll agree with that?

24           A.       Yes.

25           Q.       Let's look back at the e-mail, which is

1 identification.)

2 Q. (By Mr. Nolan) Let me hand you a document  
3 we'll make Exhibit No. 65, and it's found at  
4 STOPNC\_0256 it's titled "St. Thomas Outpatient  
5 Neurosurgical Center infection prevention and control  
6 plan." Does this appear to be part of St. Thomas  
7 Neurosurgical's policies and procedures?

8 A. Appears to be.

9 Q. Okay.

10 MR. GIDEON: May I see the document?

11 Q. (By Mr. Nolan) And the first sentence  
12 reads, "St. Thomas Outpatient Neurosurgical Center is  
13 an ambulatory care center that is part of the Howell  
14 Allen Clinic specialty clinic treating disorders of  
15 the brain and spine."

16 Have I read that correctly?

17 A. Yes.

18 Q. Is that a true statement?

19 A. No.

20 Q. And why do you say no?

21 A. Because I think that anything that's part  
22 of the Howell Allen Clinic is something that we would  
23 own exclusively, not something that would be a joint  
24 venture between two parties.

25 Q. All right. Now, I understand that Dr. John

1 Culclasure is the medical director of St. Thomas  
2 Neurosurgical; correct?

3 A. Correct.

4 Q. He was at the time of the outbreak; true?

5 A. True.

6 Q. He also was an employee of Howell Allen  
7 Clinic; is that correct?

8 A. Yes.

9 Q. And what were his responsibilities as an  
10 employee of Howell Allen Clinic?

11 A. To take care of patients referred to him  
12 from within our group for pain management, epidural  
13 steroid injections, kyphoplasty, several different  
14 interventional pain procedures that he does to take  
15 care of our patients.

16 Q. Okay. But in doing that, did he report to  
17 the St. Thomas Neurosurgical board?

18 A. You mean, like, who is his supervisor?

19 Q. Right.

20 A. I would say Greg Lanford would be his -- I  
21 would -- I would think -- if there's a problem with  
22 John, it would have -- it would be directed to Greg  
23 before it would be to the St. Thomas board.

24 Q. Okay. All right. But ultimately would the  
25 St. Thomas board have supervisory authority over Dr.

1 A. Yes.

2 Q. And when Debra came on as the facility  
3 director, did Tina stay within the Howell Allen  
4 family, so to speak, after that?

5 A. No. I think she stayed around maybe for a  
6 little while to work with Debra, but I don't -- she  
7 didn't stay. She left for another job, so I don't  
8 know if she did -- if Debra spent any time with her or  
9 not.

10 Q. So she left STOPNC for another job --

11 A. Correct.

12 Q. -- voluntarily?

13 A. Yes.

14 Q. Do you know what the immediate next job  
15 that she went to after leaving STOPNC was?

16 A. I don't know. I -- I don't know.

17 Q. Who owned or leased the office space at  
18 which STOPNC operated?

19 A. I think the lease was -- I'm not sure if --  
20 it's either all under Howell Allen and we -- the cost,  
21 you know, STOPNC pays for the 9th floor. Howell Allen  
22 pays for the 8th floor. I don't think it's two  
23 separate leases. I think it's just one lease.

24 Q. And the name of the tenant on the lease is  
25 Howell Allen, PC?

1           A.       Either Howell Allen or Neurological  
2 Services because we've been in that office for --  
3 prior -- before the name change and continue to be in  
4 that office now.

5           Q.       And the financial report that you were  
6 shown earlier has an expense for STOPNC of -- I  
7 believe it was something like rentals and repairs. Do  
8 you remember that?

9           A.       Uh-huh (affirmative).

10          Q.       And that would have been what was allocated  
11 to STOPNC for the -- their portion of the lease?

12          A.       Yes, if it went into that category. Yes.

13                  MR. REHNQUIST: I've got nothing  
14 else. Thanks.

15                  THE WITNESS: Thank you.

16                  MR. GIDEON: George, do you have any  
17 followup?

18                  MR. NOLAN: I do.

19 FURTHER EXAMINATION

20 BY MR. NOLAN:

21          Q.       If you look at the large collective exhibit  
22 that we spent some time with on Page 41. There's an  
23 e-mail exchange between you and Mr. Polkow in which he  
24 inquires about a report from the state that apparently  
25 he was expecting and you were expecting. Do you see

## DISCLOSURE

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer or the referral source for the deposition, with any party to the litigation, counsel to the parties, or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Discovery Litigation Services, LLC. Discovery Litigation Services, LLC was contacted to provide court reporting services for the deposition. Discovery Litigation Services, LLC will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28(c).

Discovery Litigation Services, LLC has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Discovery Litigation Services, LLC will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Blanche J. Dugas  
CCR No. B-2290

1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3  
4 I hereby certify that the foregoing  
5 transcript was reported, as stated in the  
6 caption, and the questions and answers  
7 thereto were reduced to typewriting under  
8 my direction; that the foregoing pages  
9 represent a true, complete, and correct  
10 transcript of the evidence given upon said  
11 hearing, and I further certify that I am  
12 not of kin or counsel to the parties in the  
13 case; am not in the employ of counsel for  
14 any of said parties; nor am I in any way  
15 interested in the result of said case.

16  
17 February 10, 2015.

18  
19  
20 BLANCHE J. DUGAS, CCR-B-2290  
21  
22  
23  
24  
25